

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA

vs.

Criminal Action 2:20-cr-017(4)  
JUDGE MICHAEL H. WATSON

STEPHANIE SOUNARY BOUPHAVONG

REPORT AND RECOMMENDATION

Defendant Stephanie Sounary Bouphavong previously pleaded not guilty to a *Superseding Indictment* charging her with one count of conspiracy to possess with intent to distribute controlled substances in violation of 21 U.S.C. § 846 (Count 1), one count of possession with intent to distribute 400 grams or more of a mixture or substance containing a detectable amount of fentanyl in violation of 21 U.S.C. § 841 (Count 8), and one count of possession with intent to distribute a mixture or substance containing a detectable amount of cocaine in violation of 21 U.S.C. § 841 (Count 9). *Superseding Indictment*, ECF No. 28. The *Superseding Indictment* also contains two forfeiture counts against this defendant. *Id.* The United States and defendant thereafter entered into a plea agreement, executed pursuant to the provisions of Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, whereby defendant agreed to enter a plea of guilty to the lesser included offense of Count 8.<sup>1</sup> On May 12, 2021, defendant, assisted by her counsel, participated in a change of plea proceeding.

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<sup>1</sup> At the outset of the change of plea proceeding, the Government moved to amend the *Plea Agreement*, ECF No. 119, to clarify that Defendant will plead guilty to the lesser included offense of Count 8 (without reference to a quantity of fentanyl), that the elements of the offense are those that pertain to the lesser included offense, and that the Government will dismiss Counts 1 and 9 should the District Judge accept Defendant's guilty plea pursuant to this *Plea Agreement*. Without objection by the Defendant, the Court granted the Government's oral motion to amend the *Plea Agreement*. Under the *Plea Agreement*, defendant agreed to the forfeiture of her interest in three firearms, ammunition, and currency seized from her residence. The *Plea Agreement* also includes an appellate waiver provision that preserves only certain claims for appeal or collateral challenge.

After being advised of her right to appear personally and with her counsel and after consulting with her counsel, defendant consented to appear by videoconference.

Defendant consented, pursuant to 28 U.S.C. §636(b)(3), to enter a guilty plea before a Magistrate Judge. See *United States v. Cukaj*, 25 Fed.Appx. 290, 291(6<sup>th</sup> Cir. 2001)(Magistrate Judge may accept a guilty plea with the express consent of the defendant and where no objection to the report and recommendation is filed).

During the plea proceeding, the undersigned observed the appearance and responsiveness of defendant in answering questions. Based on that observation, the undersigned is satisfied that, at the time she entered her guilty plea, defendant was in full possession of her faculties, was not suffering from any apparent physical or mental illness and was not under the influence of narcotics, other drugs, or alcohol.

Prior to accepting defendant's plea, the undersigned addressed defendant personally and in open court and determined her competence to plead. Based on the observations of the undersigned, defendant understands the nature and meaning of the charges against her in the *Superseding Indictment* and the consequences of her plea of guilty to the lesser included offense of Count 8. Defendant was also addressed personally and in open court and advised of each of the rights referred to in Rule 11 of the Federal Rules of Criminal Procedure.

Having engaged in the colloquy required by Rule 11, the Court concludes that defendant's plea is voluntary. Defendant acknowledged that the plea agreement signed by her, her attorney and the attorney for the United States and filed on April 20, 2021, represents the only promises made by anyone regarding the charges against her in the *Superseding Indictment*. Defendant was advised that the District Judge may accept or reject the plea agreement and that, even if the District Judge refuses to accept any provision of the plea agreement not

binding on the Court, defendant may nevertheless not withdraw her guilty plea.

Defendant confirmed the accuracy of the statement of facts supporting the charge, which is attached to the *Plea Agreement*. She confirmed that she is pleading guilty to the lesser included offense of Count 8 of the *Superseding Indictment* because she is in fact guilty of that offense. The Court concludes that there is a factual basis for the plea.

The Court concludes that defendant's plea of guilty to is knowingly and voluntarily made with understanding of the nature and meaning of the charges and of the consequences of the plea.

It is therefore **RECOMMENDED** that defendant's guilty plea to the lesser included offense of Count 8 of the *Superseding Indictment* be accepted. Decision on acceptance or rejection of the plea agreement was deferred for consideration by the District Judge after the preparation of a presentence investigation report.

In accordance with S.D. Ohio Crim. R. 32.1, and as expressly agreed to by defendant through counsel, a written presentence investigation report will be prepared by the United States Probation Office. Defendant will be asked to provide information; defendant's attorney may be present if defendant so wishes. Objections to the presentence report must be made in accordance with the rules of this Court.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to

*de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *United States v. Wandahsega*, 924 F.3d 868, 878 (6<sup>th</sup> Cir. 2019); *Thomas v. Arn*, 474 U.S. 140 (1985).

May 12, 2021  
Date

s/ Norah McCann King  
Norah McCann King  
United States Magistrate Judge